

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ORIGINAL

29  
7/30/

JOHN RICHARD JAE,  
Plaintiff,

CPR/NL/CLK

Vs.

SUPERINTENDENT DRAGOMIR HATOL,  
Defendants

FILED  
HARRISBURG

JUL 27 2001

MARY E. ANDREA, CLERK  
PER \_\_\_\_\_  
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS AND BRIEF IN SUPPORT

COMES now the Plaintiff and Pro Se Causa in the above-  
cited action. John Richard Jae, a layman unlettered in the Arts & Sciences of  
Law & legal procedures within the United States knows his petition for Writ of  
Mandamus & Brief in Support pursuant to 28 U.S.C. §(65) herin, wherefore, respectfully,  
I - THE PLAINTIFF

1. On December 7, 2000, the Plaintiff commenced this 42 U.S.C.  
§ 1983 Civil Rights Action by filing a complaint. On February 1, 2001,  
the Plaintiff filed an Amended Complaint.

2. On March 6, 2001, the Defendants, by counsel, filed a  
Motion to Dismiss the complaint. Defendants' Brief  
Support of Motion to Dismiss was filed on March 20, 2001.

3. On May 31, 2001, Plaintiff John Richard Jae filed his  
Brief in opposition to Defendants' Motion to Dismiss the com-

4. On June 22, 2001, Defendants by counsel, filed their Reply.

5. On July 11, 2001, U.S. Magistrate Judge J. Andrews filed his Report and Recommendation, thus recommending thereto the Defendants' Motion to Dismiss be granted.

6. Plaintiff John Richard Jae now moves this Court for Requiring SCT-Greene Prison Officials to Return to Plaintiff All of his Legal Materials, Court Case Files/Papers and own Personal Law Books And To Provide him with enough Carbon Paper and Envelopes To Enable him to Prepare and File His Written Objections to the U.S. Magistrate Judge's Report and Recommendation of July 11, 2001, herein this case, by the here Petition For Writ of Mandamus And Brief In Support of the following facts, arguments & citations of authorities, below:

II- BRIEF IN SUPPORT  
Plaintiff John Richard Jae avers & submits that in 2001, he sent a written Request Form to his SCT-Green Unit Manager Ken Miller, complaining about, in particular, the fact that he has not been to his stored property exchange legal & religious materials for over 30 days, June 17, 2001, because the A-10 Shift Inmate <sup>of my office</sup> Property W. Inmate Property here are not followed and are violated DC ADM. #801-VI-M-5, which states an inmate shall have access to his property once every 30

Mr. Miller failed to do anything at all to correct remedy this here Policy Violation, although he was legally required to do so.

Furthermore, Prison Officials here at SOT-Green illegally deny this Plaintiff, who is an indigent inmate, sufficient enough free paper and/or paper to prepare his legal/court pleadings in 12 active State and Federal Court cases, in particular, to prepare his written objections to the Magistrate Judge's Report And Recommendation of July 2001, herein this instant case, and large manila envelopes which this Plaintiff needs to mail written objections to this court and to defense counsel.

Because the SMU officers refuse to allow this Plaintiff to go to his stored property to get out & take back his cell with him his Court Case File/Papers & the Court and his own Personal Law Books of which he needs because SOT-Green Prison Officials are denying him sufficient enough paper & carbons which enable him to prepare said written objections and enough large manila legal envelopes to mail such to this Court to defense counsel, they are denying him access to courts in violation of the 1st & 14th Amendments of U.S. Constitution & of Article I, § 20 of the Pa. State Constitution and they are also frustrating the proper administration and they are failing in their legal duty to assist this Plaintiff in the preparation & filing of meaningful legal papers with the courts. See = Bands v. Smith, 430 U.S. 817, 82 S.Ct. 1491, 1498 (1977).

CIRCUIT U.S. Court of Appeals reasoned that

An actual injury necessarily occurs by virtue  
of a prison's failure to provide the level of  
assistance required under Bounds.

and herein the instant case the prison has failed to  
provide the level of assistance required under Bounds as  
in this pleading.

Furthermore, this Plaintiff avers & argues that, the  
deprivation of a prisoner's legal papers violates the  
Constitution. See: Brownlee v. Conine, 957 F.2d 35  
(7th Cir. 1992); Roman v. Jeffers, 904 F.2d 192, 198 (3d Cir. 1990); Mc-  
James, 810 F.2d 344, 347 (2d Cir. 1987); Simmons v. Dick, 804 F.  
183-85 (1st Cir. 1986); Wright v. Nausome, 795 F.2d 967, 968  
(1986); Patterson v. Mintzes, 717 F.2d 284, 288 (6th Cir. 1983); Hybrid  
Solutions v. Lucht, 981 F.2d 643, 644 (8th Cir. 1990); Hall v. Sutton, 755 F.  
787 (11th Cir. 1985); Zelitch v. Lucht, 981 F.2d 694 (3d Cir.  
1990); Sowell v. Koss, 941 F.2d 32, 34-35 (1st Cir. 1991); Williams  
Committee, 812 F. Supp. 1029, 1032-33 (N.D. Cal. 1992);  
Galipeau v. Berard, 734 F. Supp. 48, 53 (D.R.I. 1990); Baldwin  
606 F. Supp. 176, 183-84 (S.D.N.Y. 1985); Sher v. Bordenkirch  
526 F. Supp. 1264, 1265 (N.D. W. Va. 1981); Stringer v. Pham  
537 F. Supp. 133, 137 (N.D. Ill. 1988); and TD Carter v. Hutto  
1028 (4th Cir. 1986); the U.S. Court of Appeals For the Fourth Circuit  
held:

He has asserted that prison officials confiscated and/or  
destroyed his legal material, some of which were  
irreplaceable, thus infringing or rendering nugatory  
his constitutional right of access to the courts.  
Bounds v. Smith, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494  
52 L.Ed.2d 72 (1977) (state's failure to provide legal  
research facilities denies inmates access to the  
courts in violation of the Fourteenth Amendment).  
Hudspeth v. Foggins, 584 F.2d at 1337-8 (alleging that  
correctional authorities threatened prisoner with physical)

harm to deter him from seeking judicial relief for states cognizable claim under § 1983). Cf. *Endt v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (confiscation of legal materials from prisoners constitute unreasonable interference with access to the courts. Were courts to succeed in proving these allegations, his only remedy to some remedy would be beyond dispute. (citing 781 F.2d at 1035).

Furthermore, in *Tyler v. Rm*, Deputy Sheriff, 574 F.2d 427, 459 (8 Cir. 1978), the U.S. Court of Appeals for the Eighth Circuit stated, "the taking of a prisoner's legal papers states a claim under 42 U.S.C. § 1983 or 1985 if the taking results in interference with a infringement of the prisoner's constitutional right of access to the courts." *Sigafus v. Brown*, 416 F.2d 105 (7th Cir. 1969) (Tyler, 574 F.2d at 429).

Furthermore, in *Patterson v. McElroy*, 571 F.2d 284 (1983), the U.S. Court of Appeals for the Sixth Circuit held:

As has been summarized:

"[P]ersons in prison like other individuals have the right to petition the government for redress of grievances which of course includes access of prisoners to the courts for purpose of presenting their complaints." *Beto*, 405 U.S. 314, 321, 92 S.Ct. 1079, 1081, 31 L.Ed.2d 263 (1972) quoting *Jackson v. Avery*, 393 U.S. 483, 485, 39 S.Ct. 717, 720, 12 L.Ed.2d 718 (1969).

*Milhouse v. Carlson*, 652 F.2d 571, 373 (2d Cir. 1981). Prison officials are charged with the responsibility of assuring that inmate access to the courts is adequate, effective and meaningful. *Bandy*, supra, at 95. See also, *Burns v. Ohio*, 360 U.S. 252, 79 S.Ct. 1101, 3 L.Ed.2d 1209 (1959); *Smith v. Beppert*, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961). A prisoner's First Amendment guarantees in US are freely exercisable without hindrance. *Milhouse*, supra, 652 F.2d at 377, referencing *Fernandez v. Moran*, 618 F.2d 888, 891-92 (1st Cir. 1980); *Garland v. Ballew*, 594 F.2d 120, 123 (8th Cir. 1979); *Hudspeth v. Fugate*, 581 F.2d 125, 127 (5th Cir. 1978), cert. denied, 441 U.S. 913, 99 S.Ct. 2013, 60 L.Ed.2d 386 (1979). (Patterson, 571 F.2d at 288).

See also *Hiney v. Wilson*, 520 F.2d 589, 591 (2d Cir. 1975) and *Re Caughlin*, 517 F.2d 1311, 1320 (7th Cir. 1975).

Furthermore, Plaintiff avers & submits that, Prison officials cannot deny a prisoner his legal research, scientific or otherwise - holding prison officials beyond prison walls violates the case's integrity. Official reluctance to supply sufficient cell storage spaces is no excuse to abridge right.

The American Correctional Association (ACA) Standard S63-426 to the courts grants, " -- the right of access to the courts minimally inmates have the right to present any issue, including the following: challenging the legality of their conviction or confinement; seeking redress for illegal or treatment while under correctional control; pursuing remedies in connection with civil legal problems; and asserting against correctional or other governmental authority any other right protected by constitutional or provisions of common law. Inmates seeking judicial relief are not subject to penalties because of the decision to seek relief.

Court access enters the picture through the First Amendment which denies the ability to have the materials necessary to comprehend the evidence and reports of one's criminal conviction. Transcripts are not generic, but specific to each conviction. Errors in one case appear in the next. Thus, prison officials cannot deny an inmate research, scientific or otherwise, when the inmate's only claim is "in the books" through the courts.

In *Bonds*, supra, 97 S.Ct., at 1196, the U.S. Supreme Court moreover, our decisions have consistently required states to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is undisputed that indigent inmates must be provided at state expense with paper and pen to draft legal documents with necessary services to authenticate them, and with stamps to file them.

Plaintiff also reminds this court of what U.S. District Court held in her October 6, 2000, order in *the vs. Long, et al., case*, No. 1:00-cv-00071, and in *the vs. Laskey case* No. 1:01-cv-00161, both cases hereinafter referred to as "the cases".

(3d Cir 1981)

(u) HEREOF, based upon the foregoing facts, arguments & citations of authorities, herein, Plaintiff John Richard Doe, that this court will enter an order, ordering, that this petition be granted, and, directing SCI-Greene prison officials to forthwith all of his legal materials, court case files/papers and his own personal law books to this plaintiff here, and that they are to provide Plaintiff with one (1) Legal Pack (50 sheets of paper and 5 of carbon paper) and two (2) Large Manila Legal Envelopes immediately.

IT IS FURTHER ORDERED, that the Clerk of this Court shall forward a copy of this Court's order, granting, thereof, to the Superintendent, SCI-Greene, 169 Progress Drive, Waynesburg, PA 15370, at the same time as the Clerk serves the order out to the parties, herein this cause:

AND HE SHALL EVER PRAY  
RESPECTFULLY SUBMITTED

(S)

*John Richard Doe*  
MR. JOHN RICHARD DOE  
#AOL-329A  
SCI-Greene/SMU  
169 Progress Drive  
Waynesburg, PA 15370

Dated: 22nd JULY 2001

